

AMENDED IN SENATE SEPTEMBER 4, 2009

AMENDED IN SENATE AUGUST 24, 2009

AMENDED IN SENATE JULY 23, 2009

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 568

Introduced by Assembly Member Lieu

February 25, 2009

An act to add and repeal Chapter 4 (commencing with Section 17800) of Part 3 of Division 7 of the Business and Professions Code, *and to amend Section 11226 of the Penal Code*, relating to counterfeit goods.

LEGISLATIVE COUNSEL'S DIGEST

AB 568, as amended, Lieu. Counterfeit goods: abatement.

Existing law provides that every building or place used for the purpose of ~~unlawfully selling, serving, storing, keeping, giving away, or manufacturing controlled substances~~ *illegal gambling, lewdness, assignation, or prostitution*, and every building or place wherein or upon which these acts take place, is a nuisance that shall be enjoined, abated, and prevented, whether it is a public or private nuisance. Existing law authorizes a district attorney, ~~county counsel~~, city attorney, or citizen, as specified, to maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place in or upon

which the nuisance exists from directly or indirectly maintaining or permitting the nuisance.

This bill would provide that if a person is convicted of a specified crime, then a nonresidential building or place used by that person for the purpose of willfully manufacturing, intentionally selling, or knowingly possessing for sale any counterfeit goods, defined to include counterfeit of a registered mark or any recording or audiovisual work, the cover, box, jacket, or label of which does not disclose specified information, shall be deemed a nuisance that ~~shall~~ *may* be enjoined, abated, and prevented against the person convicted, whether it is a public or private nuisance. ~~The bill would authorize a district attorney, city prosecutor, city attorney, or citizen, as specified, to maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the nonresidential building or place in or upon which the nuisance exists from directly or indirectly maintaining or permitting the nuisance. The bill would provide that a violation or disobedience of the injunction or order for abatement is punishable as a contempt of court by a specified fine and imprisonment. The bill would make certain remedies and procedures in existing law, a violation of which is a crime, relative to the abatement of buildings or places where a nuisance exists applicable to these provisions.~~ The bill would require a district attorney, city attorney, or city prosecutor that maintains an action or actions to enjoin, abate, or prevent a nuisance pursuant to these provisions to report, by October 1, 2013, to the Senate and Assembly Committees on Judiciary on their use of these abatement provisions and their effectiveness. The bill's provisions would become inoperative on January 1, 2015.

~~Because this bill would provide for criminal penalties, if a violation of a restraining order or an injunction relative to a nuisance pursuant to the provisions of this bill would be a crime, the bill would impose a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 4 (commencing with Section 17800) is added to Part 3 of Division 7 of the Business and Professions Code, to read:

CHAPTER 4. COUNTERFEITING ABATEMENT

17800. (a) If there is a conviction for a violation of Section 653w or paragraph (2) of subdivision (a) of Section 350 of the Penal Code by any person, then a nonresidential building or place used by that person for the purpose of willfully manufacturing, intentionally selling, or knowingly possessing for sale any counterfeit goods shall be deemed a nuisance which ~~shall~~ *may* be enjoined, abated, and prevented ~~against the person convicted,~~ and for which damages may be recovered, whether it is a public or private nuisance. *The remedies and procedures provided in Article 2 (commencing with Section 11225) of Chapter 3 of Title 1 of Part 4 of the Penal Code may be applied by the court. For purposes of this section, an abatement under Section 11230 of the Penal Code is discretionary rather than mandatory and may be for a period up to one year.*

(b) *An owner shall be provided with 30 days' notice prior to the filing of an action to abate a nuisance under the provisions of this section.*

~~(b)~~

(c) As used in this chapter, "counterfeit goods" means (1) any counterfeit of a mark registered with the Secretary of State or registered on the Principal Register of the United States Patent and Trademark Office or (2) any recording or audiovisual work, the cover, box, jacket, or label of which does not disclose the information as specified in subdivision (a) of Section 653w of the Penal Code.

~~17801. If a nuisance as described in Section 17800 is kept, maintained, or exists in any county, the district attorney may, or any citizen of the state resident in the county, in his or her own name, may, maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the nonresidential building or~~

1 place in or upon which the nuisance exists from directly or
2 indirectly maintaining or permitting the nuisance.

3 17803. For purposes of this chapter, an action to abate a
4 nuisance, as described in Section 17800, may be taken by the city
5 attorney or the city prosecutor of the city or city and county within
6 which the nuisance exists, is kept, or is maintained. An owner shall
7 be provided with 30 days' notice prior to the filing of an action to
8 abate a nuisance. An action by a city attorney or city prosecutor
9 shall be accorded the same precedence as an action maintained by
10 the district attorney.

11 17804. Unless filed by the district attorney, city prosecutor, or
12 city attorney, the complaint in the action shall be verified.

13 17805. (a) If the existence of the nuisance is shown in the
14 action to the satisfaction of the court or judge, either by verified
15 complaint or affidavit, the court or judge shall allow a temporary
16 restraining order or injunction to abate and prevent the continuance
17 or recurrence of the nuisance.

18 (b) A temporary restraining order or injunction may enjoin
19 subsequent owners, commercial lessees, or agents who acquire the
20 nonresidential building or place where the nuisance exists with
21 notice of the temporary restraining order or injunction, specifying
22 that the owner of the property subject to the temporary restraining
23 order or injunction shall notify any prospective purchaser,
24 commercial lessee, or other successor in interest of the existence
25 of the order or injunction, and of its application to successors in
26 interest, prior to entering into any agreement to sell or lease the
27 property. The temporary restraining order or injunction shall not
28 constitute a title defect, lien, or encumbrance on the real property.

29 17806. (a) At the time of application for issuance of a
30 temporary restraining order or injunction pursuant to Section
31 17805, if proof of the existence of the nuisance depends, in whole
32 or part, upon the affidavits of witnesses who are not peace officers,
33 upon a showing of prior threats of violence or acts of violence by
34 any defendant or other person, the court may issue orders to protect
35 those witnesses, including, but not limited to, nondisclosure of the
36 name, address, or any other information which may identify those
37 witnesses.

38 (b) A temporary restraining order or injunction issued pursuant
39 to Section 17805 may include closure of the premises pending trial
40 when a prior order or injunction does not result in the abatement

1 of the nuisance. The duration of the order or injunction shall be
2 within the court's discretion. In no event shall the total period of
3 closure pending trial exceed one year. Prior to ruling on a request
4 for closure, the court may order that some or all of the rent
5 payments owing to the defendant be placed in an escrow account
6 for a period of up to 90 days or until the nuisance is abated. If the
7 court subsequently orders a closure of the premises, the money in
8 the escrow account shall be used to pay for relocation assistance
9 pursuant to subdivision (d). In ruling upon a request for closure,
10 whether for a defined or undefined duration, the court shall consider
11 all of the following factors:

12 (1) The extent and duration of the nuisance at the time of the
13 request.

14 (2) Prior efforts by the defendant to comply with previous court
15 orders to abate the nuisance.

16 (3) The nature and extent of any effect that the nuisance has
17 upon other persons, such as tenants or businesses.

18 (4) Any effect of prior orders placing displaced occupants' rent
19 payments into an escrow account upon the defendant's efforts to
20 abate the nuisance.

21 (5) The effect of granting the request upon any occupant of the
22 premises who is not named in the action, including the availability
23 of an alternative building or relocation assistance, the pendency
24 of any action to evict an occupant, and any evidence of
25 participation by an occupant in the nuisance activity.

26 (e) In making an order of closure pursuant to this section, the
27 court may order the premises vacated and may issue any other
28 orders necessary to effectuate the closure. However, all tenants
29 who may be affected by the order shall be provided reasonable
30 notice and an opportunity to be heard at all hearings regarding the
31 closure request prior to the issuance of any order.

32 (d) In making an order of closure pursuant to this section, the
33 court shall order the defendant to provide relocation assistance to
34 any tenant ordered to vacate the premises, provided the court
35 determines that the tenant was not actively involved in the nuisance
36 activity. The relocation assistance ordered to be paid by the
37 defendant shall be in the amount necessary to cover moving costs;
38 security deposits for utilities and for a comparable building;
39 adjustment in any lost rent, and any other reasonable expenses the
40 court may deem fair and reasonable as a result of the court's order.

1 ~~(e) At the hearing to order closure pursuant to this section, the~~
2 ~~court may make the following orders with respect to any displaced~~
3 ~~tenant not actively involved in the nuisance:~~

4 ~~(1) Priority for senior citizens, physically handicapped persons,~~
5 ~~or persons otherwise suffering from a permanent or temporary~~
6 ~~disability for claims against money for relocation assistance.~~

7 ~~(2) Order the local agency seeking closure pursuant to this~~
8 ~~section to make reasonable attempts to seek additional sources of~~
9 ~~funds for relocation assistance to displaced tenants, if deemed~~
10 ~~necessary.~~

11 ~~(3) Appoint a receiver to oversee the disbursement of relocation~~
12 ~~assistance funds, whose services shall be paid from the escrow~~
13 ~~fund.~~

14 ~~(4) Where a defendant has paid relocation assistance pursuant~~
15 ~~to subdivision (d), the escrow account under subdivision (b) may~~
16 ~~be released to the defendant and no appointment under paragraph~~
17 ~~(3) shall be made.~~

18 ~~(f) (1) The remedies set forth in this section shall be in addition~~
19 ~~to any other existing remedies for nuisance abatement actions,~~
20 ~~including, but not limited to, the following:~~

21 ~~(A) Capital improvements to the property, such as security gates.~~

22 ~~(B) Improved interior or exterior lighting.~~

23 ~~(C) Security guards.~~

24 ~~(D) Posting of signs.~~

25 ~~(E) Owner membership in neighborhood or local merchants'~~
26 ~~associations.~~

27 ~~(F) Attending property management training programs.~~

28 ~~(G) Making cosmetic improvements to the property.~~

29 ~~(H) Requiring the owner or person in control of the property to~~
30 ~~occupy the property until the nuisance is abated. The order shall~~
31 ~~specify the number of hours per day or per week the owner or~~
32 ~~person in control of the property must be physically present in the~~
33 ~~property. In determining this amount, the court shall consider the~~
34 ~~nature and severity of the nuisance.~~

35 ~~(2) At all stages of an action brought pursuant to this chapter,~~
36 ~~the court has equitable powers to order steps necessary to remedy~~
37 ~~the problem and enhance the abatement process.~~

38 ~~17807. On granting the temporary writ, the court or judge shall~~
39 ~~require an undertaking on the part of the applicant to the effect~~
40 ~~that the applicant will pay to the defendant enjoined any damages,~~

1 not exceeding an amount to be specified, as the defendant sustains
2 by reason of the injunction if the court finally decides that the
3 applicant was not entitled to the injunction.

4 17808. The action shall have precedence over all other actions,
5 except criminal proceedings, election contests, hearings on
6 injunctions, and actions to forfeit vehicles under Division 10
7 (commencing with Section 11000) of the Health and Safety Code.

8 17809. In any action for abatement instituted pursuant to this
9 chapter, all evidence otherwise authorized by law, including
10 evidence of reputation in a community, as provided in the Evidence
11 Code, shall be admissible to prove the existence of a nuisance.

12 17810. If the complaint is filed by a citizen, it shall not be
13 dismissed by him or her for want of prosecution except upon a
14 sworn statement made by him or her and his or her attorney, setting
15 forth the reasons why the action should be dismissed, and by
16 dismissal ordered by the court.

17 17811. In case of failure to prosecute the action with reasonable
18 diligence, or at the request of the plaintiff, the court, in its
19 discretion, may substitute any other citizen consenting thereto for
20 the plaintiff.

21 17812. If the action is brought by a citizen and the court finds
22 there was no reasonable ground or cause for the action, the costs
23 shall be taxed against him or her.

24 17813. If the existence of the nuisance is established in the
25 action, an order of abatement shall be entered as part of the
26 judgment in the case, and plaintiff's costs in the action are a lien
27 upon the nonresidential building or place. The lien is enforceable
28 and collectible by execution issued by order of the court.

29 17814. A violation or disobedience of the injunction or order
30 for abatement is punishable as a contempt of court by a fine of not
31 less than five hundred dollars (\$500) nor more than ten thousand
32 dollars (\$10,000), or by imprisonment in the county jail for not
33 less than one nor more than six months, or by both.

34 A contempt may be based on a violation of any court order,
35 including failure to pay relocation assistance. Notwithstanding any
36 other provision of law, any fines assessed for contempt shall first
37 be held by the court and applied to satisfaction of the court's order
38 for relocation assistance pursuant to subdivision (d) of Section
39 17806.

1 Evidence concerning the duration and repetitive nature of the
2 violations shall be considered by the court in determining the
3 contempt penalties.

4 17815. (a) If the existence of the nuisance is established in the
5 action, an order of abatement shall be entered as a part of the
6 judgment, which order shall direct the removal from the
7 nonresidential building or place of all fixtures, musical instruments,
8 and other movable property used in conducting, maintaining,
9 aiding, or abetting the nuisance and shall direct their sale in the
10 manner provided for the sale of chattels under execution.

11 (b) (1) The order shall provide for the effectual closing of the
12 nonresidential building or place against its use for any purpose,
13 and for keeping it enclosed for a period of up to one year. This
14 subdivision is intended to give priority to closure. Any alternative
15 to closure may be considered only as provided in this section.

16 (2) In addition, the court may assess a civil penalty not to exceed
17 twenty-five thousand dollars (\$25,000) against any or all of the
18 defendants, based upon the severity of the nuisance and its duration.

19 (3) One-half of the civil penalties collected pursuant to this
20 section shall be deposited in the Restitution Fund in the State
21 Treasury, the proceeds of which shall be available only upon
22 appropriation by the Legislature to indemnify persons filing claims
23 pursuant to Article 1 (commencing with Section 13959) of Chapter
24 5 of Part 4 of Division 3 of Title 2 of the Government Code, and
25 one-half of the civil penalties collected shall be paid to the city in
26 which the judgment was entered, if the action was brought by the
27 city attorney or city prosecutor. If the action was brought by a
28 district attorney, one-half of the civil penalties collected shall be
29 paid to the treasurer of the county in which the judgment was
30 entered.

31 (c) (1) If the court finds that any vacancy resulting from closure
32 of the nonresidential building or place may create a nuisance or
33 that closure is otherwise harmful to the community, in lieu of
34 ordering the nonresidential building or place closed, the court may
35 order the person who is responsible for the existence of the
36 nuisance, or the person who knowingly permits the manufacture
37 or sale of counterfeit goods, to pay damages in an amount equal
38 to the fair market rental value of the nonresidential building or
39 place for up to one year to the city or county in whose jurisdiction
40 the nuisance is located for the purpose of carrying out counterfeit

1 goods abatement programs. If awarded to a city, eligible programs
2 may include those developed as a result of cooperative programs
3 among schools, community agencies, and the local law enforcement
4 agency. These funds shall not be used to supplant existing city,
5 county, state, or federal resources used for counterfeit goods
6 enforcement or education programs.

7 (2) For purposes of this subdivision, the actual amount of rent
8 being received for the rental of the nonresidential building or place,
9 or the existence of any vacancy therein, may be considered, but
10 shall not be the sole determinant of the fair market rental value.
11 Expert testimony may be used to determine the fair market rental
12 value.

13 17816. While the order of abatement remains in effect, the
14 nonresidential building or place is in the custody of the court.

15 17817. For removing and selling the movable property, the
16 officer is entitled to charge and receive the same fees as he or she
17 would for levying upon and selling like property on execution;
18 and for closing the premises and keeping them closed, a reasonable
19 sum shall be allowed by the court.

20 17818. The proceeds of the sale of the movable property shall
21 be applied as follows:

22 (a) To the fees and costs of the removal and sale.

23 (b) To the allowances and costs of closing and keeping closed
24 the nonresidential building or place.

25 (c) To the payment of the plaintiff's costs in the action.

26 (d) The balance, if any, to the owner of the property.

27 17819. If the proceeds of the sale of the movable property do
28 not fully discharge all of the costs, fees, and allowances, the
29 building and place shall then also be sold under execution issued
30 upon the order of the court or judge and the proceeds of the sale
31 shall be applied in like manner.

32 17820. (a) If the owner of the nonresidential building or place
33 has not been guilty of any contempt of court in the proceedings,
34 and appears and pays all costs, fees, and allowances that are a lien
35 on the nonresidential building or place and files a bond in the full
36 value of the property conditioned that the owner will immediately
37 abate any nuisance that may exist at the nonresidential building
38 or place and prevent it from being established or kept thereat within
39 a period of one year thereafter, the court or judge may, if satisfied
40 of the owner's good faith, order the nonresidential building or

1 place to be delivered to the owner, and the order of abatement
2 should be canceled so far as it may relate to the property.

3 (b) The release of property under this chapter does not release
4 it from any judgment, lien, penalty, or liability to which it may be
5 subject.

6 ~~17821. If the owner of a nonresidential building or place upon~~
7 ~~which the act or acts constituting the contempt have been~~
8 ~~committed, or the owner of any interest therein, has been guilty~~
9 ~~of a contempt of court, and fined in any proceedings under this~~
10 ~~chapter, the fine is a lien upon the nonresidential building or place~~
11 ~~to the extent of his or her interest in it. The lien is enforceable and~~
12 ~~collectible by execution issued by order of the court.~~

13 ~~17822.~~

14 *17801.* A district attorney, city attorney, or city prosecutor that
15 maintains an action or actions to enjoin, abate, or prevent a
16 nuisance pursuant to the provisions of this chapter shall report to
17 the Senate and Assembly Committees on Judiciary, by October 1,
18 2013, on their use of the provisions of this chapter and their
19 effectiveness. The report shall include, but not be limited to, all
20 of the following:

21 (a) The frequency of use of the nuisance abatement provisions
22 as well as statistics on whether the use of the abatement provisions
23 correlates with a decrease in the use of criminal penalties.

24 (b) Any statistics or information concerning the impact of the
25 use of these provisions on counterfeiting overall, both in the
26 relevant county or city and overall.

27 ~~17823.~~

28 *17802.* This chapter shall remain in effect only until January
29 1, 2015, and as of that date is repealed, unless a later enacted
30 statute, that is enacted before January 1, 2015, deletes or extends
31 that date.

32 *SEC. 2. Section 11226 of the Penal Code is amended to read:*

33 11226. Whenever there is reason to believe that a nuisance, as
34 defined in this article *or as set forth in Section 17800 of the*
35 *Business and Professions Code*, is kept, maintained, or is in
36 existence in any county, the district attorney, in the name of the
37 people of the State of California, or the city attorney of an
38 incorporated city or any city and county may, or any citizen of the
39 state resident within the county in his or her own name may,
40 maintain an action in equity to abate and prevent the nuisance and

1 to perpetually enjoin the person conducting or maintaining it, and
2 the owner, lessee, or agent of the building or place, in or upon
3 which the nuisance exists, from directly or indirectly maintaining
4 or permitting it.

5 The complaint in the action shall be verified unless filed by the
6 district attorney or the city attorney.

7 ~~SEC. 2.~~

8 *SEC. 3.* No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.